

# Qld – Ekka Audit Program 2011 Report

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## About the Fair Work Ombudsman

The Fair Work Ombudsman is an independent statutory agency, created by the *Fair Work Act 2009* (the Fair Work Act) on 1 July 2009.

Our vision is fair Australian workplaces, and our mission is to work with Australians to educate, promote fairness and ensure justice in the workplace. We promote harmonious, productive and cooperative workplace relations and ensure compliance with Australia's workplace laws, by:

- offering people a single point of contact for them to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- investigating complaints or suspected contraventions of workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

Education and compliance campaigns that focus on specific industries and/or regions are a proactive strategy we use to achieve compliance with national workplace laws. They are also effective in recovering employee entitlements, particularly when the campaign targets high-risk areas and industries that employ vulnerable workers.

This report covers the background, method and results of the Queensland Ekka Audit Program 2011.

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## Summary

The Royal National Agricultural and Industrial Association of Queensland (RNA) holds an exhibition each year commonly referred to as the Ekka. The Queensland Ekka Audit Program 2011 (the program) was conducted by the Fair Work Ombudsman (FWO) in order to assess the stall holders' level of compliance with base rates of pay, overtime, penalty rates, allowances and time and wage record- keeping obligations.

Fair Work Inspectors assessed the records of 59 Ekka stall holders during August 2011. Of the 59 audits conducted, 56 have been completed and 3 are ongoing. Of the 56 completed audits, we found 7 (12.5%) stall holders to be in contravention and 49 (87.5%) to be

compliant. Five of the stall holders had contraventions related to underpayment of wages, one in relation to time and wage records and another related to payslips.

The program recovered \$9, 597.81 for 87 employees. These recoveries are significant given the Ekka runs for a period of just 10 days. Therefore the recoveries relate to a very short period of employment but for a relatively high number of employees.

The contraventions resulting in underpayments related to base wages and casual loadings. They resulted from the stall holders incorrectly classifying their employees as part-time employees rather than as casual employees.

## **Background**

The FWO analysed complaints received during 2008 to 2010. This analysis showed a high contravention rate in relation to the base rate of pay and other entitlements of musicians, entertainers, performers, creative artists and similar employees in Queensland. It was considered the Ekka could provide an ideal opportunity to assess compliance with some of these categories of employees at the one location in a short period of time.

We also considered the results of the Royal Adelaide Show Campaign conducted in South Australia during September 2010. The results of that campaign revealed high rates of contraventions (a 53% contravention rate from 188 stall holders audited).

It was also considered that there would be a relatively high number of vulnerable employees at the Ekka such as young workers who work for a short period of time for transient stall holders.

## **Aims and Objectives**

The aim of the Ekka Audit Program was to assess stall holders' compliance with Australian workplace laws, specifically in relation to rates of pay, overtime, penalty rates, allowances and time and wages record-keeping obligations.

The specific objectives were to:

- Educate stall holders on the correct application of Modern Awards and associated transitional (phasing) provisions
- Create an increased awareness of, and compliance with, correct record keeping provisions by stall holders
- Create an awareness of the role of the FWO
- Create a level playing field amongst stall holders
- Ensure stall holders' employees were receiving their minimum entitlements under Australian workplace laws
- Educate stall holders about resources available to assist with them with transitional issues.

## **Stakeholder Involvement**

Prior to commencing the program we contacted the RNA to explain the purpose of the program and the activities involved. We explained the role of our Fair Work Inspectors and when they would attend the Ekka. We also obtained detailed list of stall holders for use in planning the program.

## **Method**

Inspectors attended the Ekka on 2 days in August to conduct the audits on site. This allowed inspectors the opportunity to provide the stall holders with advice and information about their obligations before audits were undertaken.

We found that the majority of stall holders did not have time and wage records on site. Therefore we provided them with an information pack and a request for their records to be sent to the FWO 14 days after the Ekka had finished. The information pack included fact sheets and a number of templates from the FWO suite of resources.

The majority of stall holders provided their records to us within the 14 day timeframe. A small number required follow up to obtain the records. This has been difficult in a few cases where the travelling stall holder spends most of their time on the road.

We assessed all records against the appropriate award:

- Where we found no contraventions, we informed the stall holder in writing of this finding.
- Where we identified contraventions we contacted the stall holder to explain the contravention and the relevant provisions of the award. All stall holders who were found to have contraventions have voluntarily rectified the underpayments.

## **Results**

During May 2012, we analysed the findings of the audits. This showed that we had commenced 59 audits, completed 56 and 3 were ongoing. The 3 ongoing audits remain incomplete as we had difficulty contacting the stall holders who are part of the travelling show industry and constantly on the road.

Of the 56 completed audits, we found 49 stall holders (87.5%) to be compliant and 7 (12.5%) to be contravention of Australian workplace laws.

The program has recovered \$9,597.81 for 87 employees. We consider this to be a significant recovery as most of the employees were only employed for the 10 day period of the Ekka.

The average recovery was \$110.32 per employee.

<b>Table 1: Overall results</b>		
Audits finalised	56	
Stall holders compliant	49	(87.5%)
Stall holders in contravention	7	(12.5%)
Money recovered	\$9,597.81	
Number of employees who received payments	87	

Of the 7 stall holders who were in contravention, 5 had contraventions related to the underpayment of wages, one had a contravention related to time and wage records and another had contraventions related to payslips.

The contraventions related to underpayments were a result of the stall holders incorrectly classifying their employees as part-time employees when they were in fact casual employees.

The *Travelling Shows Award 2010* is very specific in relation to the classification of employees. It states that in the absence of a specific written agreement outlining a regular pattern of work and the hours of work, the employee is deemed to be a casual employee.

The contraventions that we identified were where no agreements existed and the employees were being paid the lower hourly part-time rate of pay.

#### **Case Study: Incorrect classification of Casual Employees**

*Danielle's\* business falls under the Travelling Shows Award 2010. When we audited Danielle's time and wage records, we found that her employee, Marty, was employed for the 10 day Ekka period, classified as part time and paid the part-time rate of \$15.51 per hour. The records did not show any accrual of annual or personal leave.*

*The Inspector contacted Danielle and asked her if she and Marty had a written part-time agreement setting out his regular pattern of work and specifying his hours of work. There was no agreement in place. It was further determined that there was no provision made for annual or personal leave for Marty.*

*The Inspector explained to Danielle that the Award states that without an agreement Marty should be a casual employee and entitled to the casual rate \$18.92 per hour.*

*Danielle advised that she was not aware of this provision of the Award and believed that she could pay Marty the minimum wage of \$15.51. However when the Inspector brought this to her attention she made back payments in line with the correct casual rate.*

*\*Danielle and Marty are pseudo names.*

## Other findings

We found that the majority of stall holders that we audited were local retail/food businesses who knew the correct employee entitlements. This accounted for the relatively high compliance rate in this program.

The stall holders that we found in contravention were all travelling show businesses, for example ride operators, and therefore fell under the *Travelling Shows Award 2010*. Further we found they were all paying the minimum wage of \$15.51 which was the correct amount in some but not all cases.

It is worth noting that prior to the *Travelling Shows Award 2010*, some of these stall holders would not have been covered by any award in Queensland, so the specific provision in relation to part-time vs casual work was new to many of them.

## Concluding remarks

We believe that the attendance of Inspectors at the Ekka contributed the high compliance rate and the willingness of stall holders to find out the correct rates of pay for their employees.

At our initial site visit we provided the stall holders with information and resources to assist them to check if they were complying with Australian workplace laws during the Ekka period.

There may be some value in FWO undertaking further educational work to stall holders in relation to some specific provisions of the *Travelling Shows Award 2010* particularly given the rates are likely to change.